

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3176 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J R PANDIT

Versus

STATE OF GUJARAT

Appearance:

MS KJ BRAHMBHATT for Petitioner

None Present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/02/97

ORAL JUDGMENT

Heard learned counsel for the petitioner and perused the Special Civil Application.

2. The petitioner, Mukhya Sevika (since retired) working in the Taluka Panchayat, Ankleshwar, District Bharuch, filed this Special Civil Application and prayed for issuance of directions to the respondents to consider her case for promotion to a post in the Gujarat

Development Service class II and to give her all consequential benefits.

3. This Special Civil Application has been filed in the year 1984, the Notice was issued to the respondent on 27th June 1984 and thereafter the petition has been admitted on 3rd September 1984. Though more than 12 years have already passed, it is really shocking that the respondent, the State of Gujarat in the Department of Panchayat and Rural Housing, has not cared to file the reply. That is not the end, but worse part is that even nobody is present on behalf of the respondent to assist this Court in the matter. It is not the only case but this Court has observed that in majority of cases, the replies are not filed on behalf of respondent-State and its Department. Even in the matters pertaining to Urban Land Ceiling & Agricultural Land Ceiling, replies are not being filed. This state of affairs speaks how the Government takes litigations pending in this Court. One of the main cause for delay in disposal of the matters is non-cooperation on the part of the State Government. In case reply would have been filed in this Special Civil Application in response to the Notice, the Court would have been in a position to dispose of the matter on 3rd September 1984 itself. Many cases would not have taken much time of this Court in disposal thereof at administrative stage, but for want of reply from the Government, the Court has to admit matters. The Notice has been given in this case of short duration so that looking to the nature of grievance made by the petitioner in the Special Civil Application, the same could be decided at the stage of admission itself. Be that as it may. I now proceed to decide the matter on merits.

4. In para-8 of the Special Civil Application, the petitioner made a statement that the persons junior to her, named therein, have been given promotion under the order dated 6th June 1984 in the cadre of Gujarat Development Service class II. This fact is not controverted. The petitioner has further stated that the criteria for promotion in the cadre of Gujarat Development Service class II is of seniority-cum-merit. A statement on oath has further been made by the petitioner that during the entire period of her service of about 24 years, she has never received any communication whatsoever about adverse remarks, if any, in her Annual Confidential Report. However, it is not the case of the petitioner that her case was not considered for promotion, but her case is that she has been dropped from promotion due to subjective consideration or lack of proper appraisal of her merits

in comparison of those persons junior to her. The respondent-State has not brought on record any adversity in the service record of the petitioner. If the criteria for promotion, is seniority-cum-merit, as stated by the petitioner, which goes uncontroverted, then there is no question of assessment of comparative merit of the persons. Even a senior person having average service record, may get promotion in preference to junior, though he may have meritorious record.

5. In view of these facts, this writ petition deserves to be disposed of with directions to the respondent No.1 to consider the case of the petitioner for promotion in the cadre of Gujarat Development Service class II from the date on which her juniors were promoted on the basis of criteria as it was in force at the relevant time, and in case she is found suitable for promotion, then she will be entitled for all consequential benefits following therefrom, i.e. difference of arrears of salary in lower and higher post as well as grade increments, benefits of revision of pay scale, if any made, as well as revision of her pension and other retirementary benefits. In case the petitioner is not found suitable for promotion, the respondent No.1 shall pass a reasoned order and a copy of the same may be sent to the petitioner by registered post. The aforesaid exercise should be undertaken by the respondent No.1 within a period of four months from the date of receipt of certified copy of this order and in case the petitioner is found suitable for promotion, then all consequential benefits should be given to the petitioner within three months next thereafter. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)